

UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

\* \* \*

ROBERTO DURAND,

Case No. 3:21-cv-00233-MMD-WGC

Plaintiff,

## ORDER

AMY A. COFFEE,

Defendant.

## I. DISCUSSION

12       Pro se Plaintiff Roberto Durand brings this action under 42 U.S.C. § 1983. Before  
13 the Court is the Report and Recommendation (“R&R” or “Recommendation”) of United  
14 States Magistrate Judge William G. Cobb (ECF No. 4), recommending the Court grant  
15 Durand’s application to proceed *in forma pauperis* (ECF No. 1), file Durand’s complaint  
16 (ECF No. 1-1), and dismiss this action with prejudice. Durand had until August 20, 2021,  
17 to file an objection. To date, no objection to the R&R has been filed and Durand has not  
18 otherwise communicated with the Court. For this reason, and as explained below, the  
19 Court adopts the R&R in its entirety.

20 The Court “may accept, reject, or modify, in whole or in part, the findings or  
21 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party  
22 fails to object to a magistrate judge’s recommendation, the Court is not required to  
23 conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas*  
24 *v. Arn*, 474 U.S. 140, 149 (1985); see also *United States v. Reyna-Tapia*, 328 F.3d 1114,  
25 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and  
26 recommendations is required if, but *only* if, one or both parties file objections to the  
27 findings and recommendations.”) (emphasis in original); Fed. R. Civ. P. 72, Advisory

1 Committee Notes (1983) (providing that the Court “need only satisfy itself that there is no  
 2 clear error on the face of the record in order to accept the recommendation.”).

3       Because there is no objection, the Court need not conduct de novo review, and is  
 4 satisfied Judge Cobb did not clearly err. Here, Judge Cobb first recommends Durand’s  
 5 application to proceed *in forma pauperis* be granted because he has demonstrated he is  
 6 unable to pay the full filing fee. (ECF No. 4 at 2.) Next, Judge Cobb recommends the  
 7 Court file and dismiss the Complaint with prejudice because Durand cannot bring a §  
 8 1983 claim against Defendant, who was his public defender. (*Id.* at 5.) The Court agrees  
 9 that the allegations in the Complaint relate to Defendant while she was acting in the  
 10 course of her duties as his public defender, not while performing another function that  
 11 would bring her conduct under the color of state law. (*Id.* at 6.) Having reviewed the R&R  
 12 and the record in this case, the Court will adopt the R&R in full.

13       It is therefore ordered that Judge Cobb’s Report and Recommendation (ECF No.  
 14 6) is accepted and adopted in full.

15       It is further ordered that Durand’s application to proceed *in forma pauperis* (ECF  
 16 No. 1) is granted. Durand will not be required to pay the initial installment fee.  
 17 Nevertheless, the full filing fee will still be due, pursuant to 28 U.S.C. § 1915, as amended  
 18 by the Prison Litigation Reform Act.

19       It is further ordered that, pursuant to 28 U.S.C. § 1915, as amended by the Prison  
 20 Litigation Reform Act, the Nevada Department of Corrections will forward payments from  
 21 the account of **Roberto Durand, #1078930**, to the Clerk of the United States District  
 22 Court, District of Nevada, 20% of the preceding month’s deposits (in months that the  
 23 account exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The  
 24 Clerk of the Court is directed to send a copy of this order to the Finance Division of the  
 25 Clerk’s Office. The Clerk of Court is further directed to send a copy of this order to the  
 26 attention of Chief of Inmate Services for the Nevada Department of Corrections, P.O. Box  
 27 7011, Carson City, NV 89702.

28       The Clerk of Court is directed to file the complaint (ECF No. 1-1).

1 It is further ordered that the complaint is dismissed, with prejudice and without  
2 leave to amend, as amendment would be futile.

3 The Clerk of Court is directed to enter judgment accordingly and close this case.

4 DATED THIS 25<sup>th</sup> Day of August 2021.



---

MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE